IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 2404 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT
Versus
KISHORBHAI PRAFULBHAI RABARI & ORS

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Appearance :
MR KP RAVAL APP for Appellant

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

and

HONOURABLE MR.JUSTICE M.R. SHAH

Date : 04/12/2007

ORAL JUDGMENT :(Per : HONOURABLE MR.JUSTICE J.R.VORA)

1 Instant Criminal Appeal is preferred by the State under Section 378 of the Code of Criminal Procedure, being aggrieved by the judgment and order dated 9th of April, 2004, delivered by learned Additional Sessions Judge, Fast Track Court No.1, Bhavnagar, in Sessions Case No. 69 of 1995, whereby all the three respondents herein, being accused of the Sessions Case, came to be acquitted by the Trial Court, for the charges levelled against them under Sections 326, 324, 307, 394, 397, 364 to read with Sections 34 and 114 of the Indian Penal Code as well as under Section 135 of the Bombay Police Act.

2 According to the prosecution case, a complaint in the case came to be lodged on 26th of January, 1994, by complainant Ibrahim Isabhai, resident of Shihor, before Ramanbhai Kodarbhai Patel, the then working as PSI, Shihor Police Station. According to complainant, on 25th of January, 1994, at about 10.15 p.m. he closed his pan-bidi shop and was going towards a theater. While he was passing near the hotel of one Noorbhai, accused Kishorbhai Prafulbhai Rabari and accused Sukhabhai Nathabhai Rabari came near to him in a rickshaw. Accused Sukhabhai conveyed to the complainant that guest of the complainant had been to Bajrangdas Hotel and, therefore, the complainant was required to go there. Complainant boarded the rickshaw and with these two accused, rickshaw passed through

Bajrangdas Hotel and halted, where two other accused, Harun Musabhai Saiyed and Rabari Dineshbhai Bababhai, also boarded in the same rickshaw along with the complainant. The rickshaw thereafter was driven from that spot and, therefore, the complainant asked the accused that where was be being taken. Accused Sukhabhai Nathabhai stated that complainant was to be killed on that day. Complainant requested to stop the rickshaw, but accused Harun Musabhai took out a knife and threatened the complainant to keep mum. Rickshaw thereafter came out of the town and near hills in one plain rickshaw was halted and complainant was asked to get down from rickshaw. Complainant was directed to take out his clothes. Complainant refused to take out his clothes and, therefore, accused Harun Musabhai started beating the complainant with sticks and belt and he also started to undress the complainant. Complainant asked these four persons the reasons for beating him. The accused stated that the complainant was not paying them money as demanded by them and, therefore, he was to be killed on that day. Accused Dineshbhai Bababhai Rabari attempted to throttle the complainant and accused Kishorbhai Prafulbhai Rabari started digging ditch. Harun Musabhai and accused Dineshbhai took out knife and they were about to inflict injury, complainant requested them that what amount they needed and that he was prepared to give the money. Accused Dineshbhai Rabari demanded Rs. 1 lakh, but

complainant stated that he had Rs. 20,000/- at his house and remaining amount would be paid by him on next month and, therefore, the complainant was made to sit in the rickshaw again and was set free near Dholakia street. The complainant had been to his house, had taken the amount and Rs. 20,000/- from his house and was paid by him to accused Kishorbhai Rabari. At that time, all the four persons threatened the accused that if complainant attempted to file a complaint, he would be done to death and thereafter all the four persons had driven away in the said rickshaw. The complainant noted the number of rickshaw to be GJ-4-T492. Complainant thereafter went to Primary Health Center at Shihor and was taking treatment at Primary Health Center. Head Constable C.L. Padvi came to know about this incident and conveyed to Ramanbhai Kodarbhai Patel, PSI, who reached at Primary Health Center and recorded the complaint of the complainant and a crime came to be registered. The investigation was entrusted to PW-15 Ramanbhai Kodarbhai Patel and ultimately a charge sheet came to be filed against four accused. It appears that accused Harunbhai Musabhai died on 26th of July, 1999 and, therefore, trial appears to have abated against him and was proceeded against the present three respondents. The said criminal case was committed to the Court of Sessions and was registered as Sessions Case No. 69 of 1995 and was made over to the Additional Sessions Judge, Fast Track Court No.1, Bhavnagar, who framed charges

against three accused - present respondents on 30th of June, 2003 and accused pleaded not guilty to the above said charges and, therefore, they were put to trial. The prosecution examined as many as 15 witnesses to prove its case and produced on record necessary documentary evidence. Evidence was being over, statement of each of the respondents, under Section 313 of the Code of Criminal Procedure, was recorded by the Trial Court, wherein their defence was of total denial and thereafter the learned Trial Judge heard the prosecution as well as the defence and came to the above conclusion and, hence, this Appeal by the State against the order of acquittal.

3 Learned APP Mr. K.P. Raval was heard at this stage in detail. We have summoned Record and Proceedings from the Trial Court, which is available with us. We have gone through the evidence recorded minutely even at this stage and have scanned the reasons assigned and the conclusions arrived at by the Trial Court for acquittal. We have also re-appreciated the evidence.

4 Going through the evidence, it appears that, the complainant and injured Ibrahim Isabhai was not available in trial for deposition. According to Trial Court, attempts were made to serve the complainant, but he was not available. PW-15 Ramanbhai Kodarbhai

Patel, the Investigating Officer, examined at Exhibit-47, stated in his deposition that sufficient attempts were made to find out whereabouts of complainant Ibrahim Isabhai, but he was not found. A statement of wife of the complainant was recorded, in which also it is found that the complainant was not available for last two years on account of harassment by bootleggers and, therefore, the only material witness i.e. injured and complainant, could not be examined by the prosecution.

5 Going through the remaining evidence, it appears that, panch witness i.e. Kanabhai Bhayabhai, examined at Exhibit-19; Chandugiri Prabhatgiri, examined at Exhibit–20; Harshadrai Bhanushankar, examined at Exhibit–25; Rajakbhai Punjabhai, examined at Exhibit–27; Dilipbhai Barkatbhai, examined at Exhibit- 29; Hajibhai Ibrahimbhai, examined at Exhibit–30; Hiteshbhai Dinubhai, examined at Exhibit–32; Prakashbhai Bababhai, examined at Exhibit–33; Sanjaybhai Jayantilal, examined at Exhibit-35; Nitinbhai Jasvantrai Dave, examined at Exhibit-36; Kirankumar Ramsangbhai, examined at Exhibit–38 and Vadhuben Bhikhabhai, examined at Exhibit–39, are the material witnesses and panchas, and none of these witnesses supported the prosecution case in any manner. Panchas stated to the extent that they had signed the panchnama and that they did not know anything about the contents. Even no other material witness supported the

prosecution case. ASI Bhikhabhai Jetabhai Vasava, examined at Exhibit-41 is the then PSO, who registered the offence against the accused. According to him, the police station had received information from hospital that the complainant was brought to the hospital on account of scuffle and injuries and, therefore, an entry was made in police station register and Beat Jamadar Mr. Padvi was informed, and in turn, Mr. Padvi informed PSI Mr. Patel, who recorded the complaint of complainant Ibrahim Isabhai. PSI Mr. Patel is examined at Exhibit–47. PW-3 Dr. Dineshbhai Raghavbhai Makwana has been examined at Exhibit-22, had treated the complainant on 26th of January, 1994, at 3.15 a.m. and found injuries, as narrated by him in the deposition, but in the absence of the evidence of complainant, the evidence of Medical Officer, is not useful to the prosecution. PW-3 Dr. Dineshbhai Raghavbhai Makwana produced on record at Exhibit–24 the medical certificate in respect of the complainant.

6. This is all the prosecution case.

7. While re-appreciating the evidence, even considering the vital aspect of the matter, it clearly transpires that it could not be proved by the prosecution that the incident occurred as narrated by the complainant in his complaint, which is exhibited on record at

Exhibit–48. This is so because, firstly, the complainant was not available in trial for deposition, and that the other witnesses did not support the prosecution case, and only evidence of Medical Officer to the extent that the complainant got injuries in the scuffle, would not suffice to connect the accused with the crime. In the above said circumstances, the learned Trial Judge acquitted the present respondents of all the charges levelled against them.

8. This being an Appeal against the acquittal, we have scanned the reasons assigned by the Trial Judge, as above. We do not find even at this stage that the reasons assigned by the Trial Judge for the acquittal are perverse, manifestly erroneous, palpably wrong and demonstrably unsustainable. In this view of the matter, this is not a fit case, which could be admitted for consideration and, hence, the following order :

"Leave to Appeal refused. Appeal stands dismissed."

(J. R. VORA, J.)

(M. R. SHAH, J.)

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